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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ALLEN ERNEST YOUNG,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS
OF MARYLAND

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QUESTION PRESENTED

Were Petitioner's Fourth Amendment rights violated by the Trial Court's refusal to suppress from evidence the fruits of a search authorized upon an Affidavit containing essential information that was false and placed in the Affidavit either with actual knowledge of its falsity or with utter disregard for its truth?

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Petitioner moves this Court to issue a Writ of Certiorari to review the Judgment and Opinion entered on July 21, 1982 by the Court of Special Appeals of Maryland, now that the Court of Appeals of Maryland has denied certiorari.

DECISION BELOW

The Judgment and Opinion of the Court of Special Appeals of Maryland is unreported, as is the Order denying certiorari filed by the Court of Appeals.

Copies of these Opinions and Orders are found in the Appendix (A. 1-8).

JURISDICTION

This is a petition from the July 21, 1982, affirmance of the September 4, 1981, conviction of the Petitioner by the Circuit Court for Harford County, Maryland, which Court found him guilty of assault with intent to murder and use of a handgun in the commission of a crime of violence.

Jurisdiction is invoked under Article 28 U.S.C. Section 1257(3) and the Fourth and Fourteenth Amendments to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The victim was shot about 6:30 A.M. on June 10, 1980, while he was on his way to work. Until July 19, 1980, investigators of the Maryland State Police pursued a number of leads, but as a result of an anonymous telephone call received that day at the MSP Bel Air Barracks, the investigation thereafter focused solely upon Young and his uncle, Richard. At 3:40 P.M. on July 19, 1980, Cpl. Robert Quoos was working the desk when he received a telephone call from a female who would not identify herself, accusing Young of having participated in the shooting. Quoos' recorded recollection of that conversation (Petitioner's Pretrial Motion Exhibit No. 1) was that the caller

gave Young's residence, and she also stated that the guns used in the Foley shooting were at the home of Petitioner's parents, "in Rosedale". No reference whatsoever was made by Quoos to the presence of any weapons in Young's apartment. Quoos reported the phone call to Cpl. Joseph P. Kelly of the Maryland State Police, and on June 20, 1980, Kelly presented an Affidavit to the Circuit Court for Baltimore County, in support of a Search Warrant for Young's apartment, and for what Kelly claimed was Young's father's home on Willow Avenue in the Overlea section of Baltimore County. (The Affidavit's text is printed in the Petition's Appendix). The Affidavit contained false information which must have been intentionally inserted therein by the Affiant with full knowledge of its falsity and with specific intent to mislead the Court. Specifically, the Affidavit completely distorts the information supplied by the anonymous caller, and falsely claims that the Affiant corroborated the information that the caller supplied by making a "positive identification" of Young's father (which the State conceded was "incorrect" during the Pre-trial Suppression Hearing). Without the intentionally false information in the Affidavit, there would be no probable cause for the search of Young's apartment.

The officers obtained a Search Warrant for Young's apartment, and a Search Warrant for the Willow Avenue address. When they arrived at 305 Willow Avenue in Overlea, the officers realized that their "positive identification" of Young's father as the person residing at that address was totally untrue, so they did not conduct a search there. One of Young's uncles lives at that address, and the "positive identification" claimed by Kelly was no more than his discovery that someone with the last name of Young lived at that address. A handgun was found in Young's apartment, and later introduced into evidence at the trial over his objection, although a ballistics expert could not state whether the handgun had been used in the shooting. Present at the time of the search of Young's apartment were

Young himself and one Melanie Sue Treadway, who turned out to have been the anonymous caller. Ultimately, Treadway became a State's witness and her testimony as to what she claimed Young told her about the Foley shooting constituted the bulk of the State's case against him.

At a Hearing on Young's Motion for Suppression, Cpl. Kelly acknowledged that there were certain "inaccuracies" in the Affidavit, but he insisted that the information supplied him by Quoos was accurately recorded in the Affidavit. Kelly explained that he was "mistaken" when he wrote that he had made a "positive identification" of Young's father as being the person living at 305 Willow Avenue in Overlea, but he insisted that this address was received from Quoos and had been received by Quoos from the anonymous caller. In denying suppression at the Pretrial Hearing, the Court said:

When we come to the Suppression, we are all getting back to the call of the anonymous phone caller and whether the information that she furnished is sufficient to justify the search of these premises and we have more than one. We have the Defendant's Exhibit one. There's no question that Defendant's Exhibit one identifies the party by description, at least as being a white female subject who won't give her name and who said that she knew who did the shooting. She named this Defendant and she said that two guns were used; that information was not known to the general public. It was known to the ballistics sergeant who made the test and it was made known to the investigating officers and that's about all, according to the evidence that I have heard, at least.

Then she said that the guns were at his parent's residence in Rosedale, although according to the testimony of Corporal Kelly she told him that the

guns were either at his home or his parent's residence. Now, it's true that he came up with the parent's residence in Overlea. It's equally true if the search had been made on the property in Overlea I would have no problem, because there's no just cause for searching the property in Overlea. We have a different situation here, however, in my opinion. She described the Defendant by name. She told the police that two guns were used. She, according to the testimony that Corporal Kelly presented from the stand, told Corporal Quoos that they were either at his father's home or at his home and he used that information in the affidavit which he presented to Judge Land. So that when he presented the affidavit to Judge Land, Judge Land received an affidavit on which this information was set out with the alternative sites for the guns either in the Defendant's home or his father's home.

Now, it's true the wrong address was given for the father's home and Corporal Kelly explained how he did that. He didn't use the best judgment in doing that, it's certain. There's no question about that but in my opinion that's a red herring, if he described both homes and issued a search warrant for both homes and subsequently withdrew the second warrant on the home because they realized it was not based on the correct information, thus he had not followed up with the tip but the search warrant for his home would be good for probable cause unless we have to excise all of this. Now, when we come to the Frank case, the Frank case, I think, requires something more than what we have here because what we have here really is an anonymous caller, not subject to all of the safeguards of an informant who gives information which on its face is reliable and I

think it's made reliable by the fact that they knew an item of information that wasn't generally available. Only some party who knew something about the shooting could possibly know that two guns were used; that information in itself makes her evidence reliable.

Now, when we come to the economic background for it, we do have disputed testimony but we have the testimony of Mr. Foley who was put on the stand here today that he told Corporal Kelly these various things. He told him that he went in, he suspected that bills weren't proper. He told him that he went in and cut down the business to several hundred dollars a week when it had been much larger. He told him that he was going out to the airport to pick up this man from headquarters; that meeting was set up, although, he did say that he was not instrumental in setting up this meeting but that's not a relevant part of this, it's not an important part. The fact that the meeting was held and the meeting was held on the basis of information that he had relayed to headquarters. It was supported by the other gentleman, Hallahan who said that they had cut down the business with Atlas and he had in fact, furnished a letter dated July the 18th, but that doesn't necessarily controvert the other evidence, as Mr. Murphy had argued, because the evidence of Mr. Foley was that we made the decision which was June 10th, but we hadn't informed Atlas. So, July 18th doesn't necessarily controvert that evidence. The fact that Mr. Foley told the Corporal at least that at one time Richard Young had made the statement about taking the pistol out of his desk when it's true he testified here today that he said it happened a year earlier possibly. There's nothing in the affidavit that he told

Corporal Kelly that it happened a year earlier. He told him it happened on one occasion. When Judge Land saw this affidavit prepared it appears to me that Judge Land had probable cause to issue this warrant. He had information in here naming the accused who was charged with perpetrating a crime. He had information that said that this informant said the guns were in his house or the father's house. It's true the father's house was incorrectly described and its name was given wrong but that doesn't take away from the validity of the warrant. I have another reason too, that Captain Kelly when he was testifying, said that if the information received from the informant was as listed on the printed or typed statement, which Defendant put in as Exhibit one, which says that the guns were in his parent's residence, if that were the only information that he received from Corporal Quoos there would be no reason to ask for a search warrant for two residences, but he was very positive that Corporal Quoos told him the information, it was in either of the two places and I think that backs up what he said. So, for those reasons I feel all of the standards that are required have been met and I feel that there was probable cause for issuing this search warrant and I would, therefore, deny the Motion to Suppress any evidence received on the basis of the search warrant.

The Court's conclusions (including the finding that Kelly's testimony in this regard was credible) must be considered clearly erroneous in light of the Quoos memorandum (Defendant's Pre-trial Motion Exhibit No. 1) and the trial testimony of Treadway herself who stated under oath that she telephoned the very information that was contained in the Quoos memorandum, and specifically denied supplying the information contained in the Affidavit.

REASON FOR ALLOWANCE OF WRIT

The Trial Court erred in denying Young's Motion for Suppression of evidence seized from his apartment (a) at the conclusion of the pre-trial hearing, and (b) when he renewed his Motion at trial in light of evidence produced by the State, and this Writ should be granted to clarify for trial judges what false information should be redacted or excised from Search Warrant Affidavits.

An examination of the attached July 20, 1980, Affidavit, and a comparison of the representations made therein with the testimony produced at the pre-trial hearing, compel the conclusion that the Affiant intentionally misstated the information that had been supplied by the anonymous caller, in order to get a warrant for Young's apartment. Significantly, not only did the Affiant misstate the information supplied by Quoos, he then claimed to make a positive verification of the information that was never supplied as a basis for giving credit to the anonymous caller. In truth, when Treadway called she told the police where Petitioner lived, and said that the guns were at Young's parents house in Rosedale. Because the investigators could not find any address for a Young in the Rosedale section of Baltimore County, they simply lied and claimed that the anonymous caller said the guns were "*either*" at Young's apartment *or* at his father's house "*on Willow Avenue in Overlea*". In no way should the fruits of such deliberate and/or intentionally reckless falsification have been received into evidence, and Petitioner's relief can now only come by order of this Honorable Court.

The Court of Special Appeals found it significant (see footnote 1, p. 4) that Treadway did not testify at the pre-trial hearing. The State never supplied Petitioner's counsel with any information concerning her recollection of the anonymous phone call. A review of the record will establish that the State would not even supply defense counsel Treadway's address so

there was no way for the defense to learn that her testimony would be entirely consistent with Defendant's Pre-trial Motion Exhibit No. 1. The only conclusion that can be drawn from this chain of events is the fact that Treadway did not say the guns were in Young's apartment, but rather that she said they were at his parent's residence "*in Rosedale*", and the Affiants—experienced police officers who knew that an anonymous tip was not entitled to any credit unless it could be verified—"made up" the fact that she provided them with the address 305 Willow Avenue in Overlea, and thereafter lied about making a "positive identification" of the resident of that address as being Young's father. Without that information, the Affidavit fails to establish probable cause, and under the authority of *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 2676 (1978) suppression of evidence should be ordered, especially when the State itself—during Treadway's trial testimony—established that she verified Cpl. Quoos recorded recollection of the information contained in the anonymous phone call.

A Writ of Certiorari should be issued in this case because this Honorable Court must not permit the *Franks* case to be sidestepped by factual findings that deliberate falsification was actually innocent mistake.

CONCLUSION

For the reasons heretofore cited and in reliance upon the legal authorities hereinabove set forth, it is respectfully submitted that a Writ of Certiorari to the United States Court of Special Appeals of Maryland be issued herein.

Respectfully submitted,

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